

PATENT
Customer No. 22,852
Attorney Docket No. 4121.0076-00000

#10

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:) **ATTN: Office of Petitions**
) **Box DAC**
Alan L. GREENER et al.)
)
Serial No.: 08/846,996) Group Art Unit: 1636
)
Filed: May 1, 1997) Examiner: Railey, J.
)
For: HIGHLY TRANSFORMABLE)
)
)
BACTERIAL CELLS AND)
)
METHODS FOR PRODUCING)
)
THE SAME)

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Assistant Commissioner for Patents
Washington, DC 20231

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Sir: 620.00 OP

PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)

The above-identified application became abandoned for failure to file a timely response to the Office Action mailed on February 3, 1998 (the Office Action), which set a three month period to respond. The abandonment date of this application is May 4, 1998, (the day a response was due, since May 3, 1998, was a Sunday, and the next succeeding day which was not a Saturday, Sunday, or holiday was Monday, May 4, 1998).

Applicants hereby petition for revival of the application in view of the following statements:

The firm Pennie & Edmonds (Pennie) transferred the above-noted patent application to the firm Finnegan, Henderson, Farabow, Garrett & Dunner

(Finnegan). It was first docketed at Finnegan on February 4, 1998, according to Finnegan's docketing records. During a status review of the patent portfolio for the assignee of this application, Stratagene, it was brought to the undersigned's attention on June 21, 2001, that there was no record of any action in this application since a Corrected Filing Receipt was received by Pennie from the United States Patent and Trademark (USPTO) on January 6, 1997. The undersigned instructed his assistant to call the USPTO to check the status of the application. On June 22, 2001, the undersigned's assistant was informed that the application had been abandoned in May 1998.

The undersigned then investigated whether any of the parties involved was or had been aware of the abandonment. The undersigned also obtained a copy of the USPTO file, which included a copy of the Action and Notice of Abandonment (mailed September 15, 1998), which were both mailed from the USPTO to Pennie.

Samuel Abrams, the attorney at Pennie who was responsible for this application when it was transferred to Finnegan, informed the undersigned that, in view of his investigation, he is not aware of any record at Pennie of receiving the Action and any record of sending the Action to either Finnegan or Stratagene. Mr. Abrams also informed the undersigned that, in view of his investigation, he is not aware of any record at Pennie of receiving a Notice of Abandonment and any record of sending the Notice of Abandonment to either Finnegan or Stratagene. Also, Mr. Abrams informed the undersigned that in 1998 Pennie's normal practice was not to enter USPTO correspondence such as an Office Action or a

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Notice of Abandonment, in their docket after a case was transferred to another law firm. Mr. Abrams also informed the undersigned that he is not aware that anyone at Pennie knew of the abandonment of this application until the undersigned contacted him on or after June 22, 2001. Mr. Abrams also informed the undersigned that, in view of his investigation, any delay in failing to file a response by the due date or in filing this petition, petition fee, and the response, was unintentional on the part of Pennie.

Ronni Sherman of Stratagene informed the undersigned that, in view of her investigation, she is not aware of any record at Stratagene of receiving the Action and any record of sending the Action to either Finnegan or Pennie. Ms. Sherman also informed the undersigned that, in view of her investigation, she is not aware of any record at Stratagene of receiving a Notice of Abandonment and any record of sending the Notice of Abandonment to either Finnegan or Pennie. Ms. Sherman also informed the undersigned that she is not aware that anyone at Stratagene knew of the abandonment of this application until the undersigned contacted her on or after June 22, 2001. Ms. Sherman also informed the undersigned that, in view of her investigation, any delay in failing to file a response by the due date or in filing this petition, petition fee, and the response, was unintentional on the part of Stratagene.

The undersigned states that, in view of his investigation, he is not aware of any record at Finnegan of receiving the Action and any record of sending the Action to either Stratagene or Pennie. The undersigned also states that, in view of his investigation, he is not aware of any record at Finnegan of receiving a

Notice of Abandonment and any record of sending the Notice of Abandonment to either Stratagene or Pennie. The undersigned also states that he is not aware that anyone at Finnegan knew of the abandonment of this application until on or after June 22, 2001. In fact, within Finnegan's file there is a copy of letter from Finnegan to Stratagene, which is dated August 27, 1998, in which Finnegan requests any information for an Information Disclosure Statement. In that letter, there is no mention of abandonment of the application. In fact, the letter notes that to avoid an IDS fee, such an IDS should be filed before the mailing date of a first Office Action on the merits. Thus, it is apparent from Finnegan's file that Finnegan was not aware of the Action or an abandonment of the application by August 27, 1998. The undersigned also states that, in view of his investigation, any delay in failing to file a response by the due date or in filing this petition, petition fee, and the response, was unintentional on the part of Finnegan.

Accordingly, in view of the facts set forth above, the failure to file a response by the May 4, 1998, due date was unintentional, and the entire delay from the due date for the response to the filing of this petition, response, and petition for extension of time was unintentional.

The following are enclosed:

Petition fee of \$620.00; and

Response to the Action.

If there are any other fees due in connection with the filing of this Petition, including any fees required for an extension of time, such an extension is

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requested, and the Commissioner is authorized to charge any related fees to
Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON,
FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: July 19, 2001

By: 
M. Paul Barker
Reg. No. 32,013

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